Supreme Court, U.S.
FILED
JUN 24 1999
CLERK

No. 98-1464

In the Supreme Court of the United States

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES, ET AL., PETITIONERS

v.

CHARLIE CONDON, ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

JOINT APPENDIX

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PETITION FOR WRIT OF CERTIORARI FILED: MARCH 15, 1999
CERTIORARI GRANTED: MAY 17, 1999

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NOTICE

The following items have been omitted in printing this appendix because they appear on the following pages in the printed appendix to the petition for a writ of certiorari:

District court order granting summary judgment for respondents (Sept. 11, 1997, as amended Sept. 16, 1997)	38a
Opinion of the court of appeals (Sept. 3, 1998)	1a
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

No. 3:96cv3476

CHARLIE CONDON, PLAINTIFF

SOUTH CAROLINA PRESS ASSOCIATION; VIRGINIA PRESS ASSOCIATION; NORTH CAROLINA PRESS ASSOCIATION; WEST VIRGINIA PRESS ASSOCIATION; MARYLAND/DELAWARE/DISTRICT OF COLUMBIA PRESS ASSOCIATION; NEWSPAPER ASSOCIATION OF AMERICAN; AMERICAN SOCIETY OF NEWSPAPER EDITORS, INTERVENOR-PLAINTIFF

v.

JANET RENO; USA, DEFENDANT

JANET RENO; USA, INTERVENOR-DEFENDANT

DOCKET ENTRIES

DATE	DOCKET NUMBERS	PROCEEDINGS
1996		
Nov. 19	1	COMPLAINT; FILING FEE $ 120.00 RECEIPT # 300 11097 Service due by 3/19/97 for Janet Reno (geva) [Entry date 11/27/96]

DATE	DOCKET NUMBERS	PROCEEDINGS
		* * * * *
Nov. 20	4	AMENDED COMPLAINT (Amended to Change Caption around) by plaintiff Charlie Condon, (Answer due 11/30/96 for Janet Reno) Service due by 3/20/97 for Janet Reno amending [1-1] complaint (geva) [Entry date 11/27/96]
Dec. 6	5	MOTION to intervene by SC Press Association, VA Press Association, NC Press Association, WVA Press Assoc, MD-DE-DC Press Assoc, Newspaper Assoc, American Society of (geva) [Entry date 12/10/96]
		* * * * *
Dec. 10	7	ORDER granting [5-1] motion to intervene by SC Press Association, VA Press Association, NC Press Association, WVA Press Assoc, MD-DE-DC Press Assoc, Newspaper Assoc, American Society of (signed by Judge Dennis W. Shedd) (geva) [Entry date 12/11/96]
		* * * * *

DATE	DOCKET NUMBERS	PROCEEDINGS
1997		
Jan. 17	9	MOTION by defendant Janet Reno to dismiss action with prejudice (geva)
		* * * * *
Mar. 31	22	MOTION by defendant Janet Reno, defendant USA to dismiss complaint-in-intervention (geva)
		* * * * *
Aug. 14	35	MOTION by plaintiff Charlie Condon, intervenor-plaintiff SC Press Assoc, intervenor-plaintiff Virginia Press Assoc, intervenor-plaintiff NC Press Assoc, intervenor-plaintiff West VA Press Assoc, intervenor-plaintiff Maryland/Delaware, intervenor plaintiff Newspaper Assoc, intervenor-plaintiff American Society for summary judgment (geva)
		* * * * *

DATE	DOCKET NUMBERS	PROCEEDINGS
Sept. 11	39	ORDER granting [35-1] motion for summary judgment, denying [22-1] motion to dismiss complaint-in-intervention, denying [9-1] motion to dismiss action with prejudice and that the United States be PERMANENTLY ENJOINED from enforcing the DPPA in the State of South Carolina. All claims not addressed herein is dismissed as moot. (signed by Judge Dennis W. Shedd) (geva)
Sept. 11	40	SUMMARY JUDGMENT for plaintiff Charlie Condon (by the Clerk) (geva)
Sept. 11	—	Case closed (geva)
Sept 16	41	ORDER amending Order entered on 9/11/97 (signed by Judge Dennis W. Shedd) (geva)

DATE	DOCKET NUMBERS	PROCEEDINGS
Nov. 5	42	NOTICE OF APPEAL by defendant Janet Reno, defendant USA Re: [41-1] order, [39-1] order Fee Status: USA (fee not required) Transcript purchase order due on 11/17/97 Appeal record due on 12/5/97 (cham)

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-2554

CHARLIE CONDON, ET AL.

v.

UNITED STATES, ET AL.

DOCKET ENTRIES

DATE	DOCKET NUMBERS	PROCEEDINGS
1997		
Nov. 12		Civil case docketed. (db)
		* * * * *
1998		
Jan. 21		Brief filed by Appellant Janet Reno, Appellant US. Type of Service: CD Copies of brief: 8 # brf pages: 37. Sufficient [Y/N]?: n - FRAP - the standard of review is not within the argument section . . . [97-2554] Appellee(s) brief due 2/20/98 for State of SC, for Charlie Condon. (rba)

DATE	DOCKET NUMBERS	PROCEEDINGS
		* * * * *
Feb. 3		Appellant(s) brief made sufficient by Appellant Janet Reno, Appellant US [97-2554] (rba)
		* * * * *
Feb. 27		Brief filed by Appellee Charlie Condon, Appellee State of SC. Type of Service: PM Copies: 8 # brf pages: 30. Sufficient [Y/N]: y. .. [97-2554] (rba)
		* * * * *
Mar. 27		Reply brief filed by Appellant Janet Reno, Appellant US. Type of Service: PM Copies of brief: 8 # brf pages: 69. Sufficient [Y/N]: y. .. [97-2554] (rba)
		* * * * *
Jun. 2		Oral argument heard. Courtroom Deputy: JLC, Jr. [97-2554] (jc)
		* * * * *
Sept. 3		Published, authored opinion filed. [97-2554] (db)
Sept. 3		Judgment order filed. Decision: affirmed. (one judge dissenting) [97-2554] (db)

DATE	DOCKET NUMBERS	PROCEEDINGS
		* * * * *
Oct. 16		Petition filed by Appellant Janet Reno, Appellant US for rehearing. Number copies filed: 20 [2864680-1]., for suggestion for rehearing in banc. Number of copies filed: 20 [2864680-2]. [97-2554] (db)
		* * * * *
Dec. 22		COURT ORDER filed denying the motion for rehearing [2864680-1], denying motion for rehearing en banc [2864680-2] Copies to all counsel. [97-2554] (db)
Dec. 30		Mandate issued. [97-2554](mst)
		* * * * *

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

C.A. No. 3:96-3476-19

CHARLIE CONDON, ATTORNEY GENERAL
FOR THE STATE OF SOUTH CAROLINA,
AND STATE OF SOUTH CAROLINA, PLAINTIFFS

v.

JANET RENO, ATTORNEY GENERAL OF
THE UNITED STATES, AND UNITED
STATES OF AMERICA, DEFENDANTS.

AMENDED COMPLAINT

Plaintiffs Charlie Condon, as Attorney General of the State of South Carolina, and the State of South Carolina, allege as follows:

Jurisdiction and Venue

1. This action seeks injunctive and declaratory relief pursuant to 28 U. S. C. §2201(a) and 2202 for purposes of enjoining the enforcement, in whole or in part, and declaring unenforceable, the Driver's Privacy Protection Act of 1994, P.L No. 103-322, §§300001-300003 (18 U.S.C. §§2721-2725), as an unconstitutional federal directive which requires the State of South Carolina, through its state executive officers and legislative process, to administer a federal program which infringes on the State's sovereign right to legislate as determined by its elected representatives and officials,

all in violation of the Tenth Amendment to the United States Constitution.

2. This Court has jurisdiction in this case pursuant to 28 U.S.C. §1331 because all matters in controversy arise under the Constitution and laws of the United States.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e) in that a substantial portion of the events giving rise to the claim would occur in this judicial district.

Parties

4. Plaintiff Charlie Condon is the duly elected Attorney General for the State of South Carolina, and in that capacity is vested with the authority to protect the legal interests of the State of South Carolina and uphold the State Constitution. He brings this action on behalf of the State of South Carolina in his official capacity.

5. Plaintiff State of South Carolina is a sovereign state of the United States of America.

6. Defendant Janet Reno is the Attorney General of the United States and is responsible, by delegation from the President and Congress of the United States, for the enforcement of criminal and civil penalties which the Driver's Privacy Protection Act of 1994 purports to impose.

7. Defendant United States of America is a sovereign constitutional government of those limited enumerated powers specified in, and restrained by, the Constitution of the United States. All references in this Complaint to the "United States" refer to Defendant United States in its sovereign capacity.

General Allegations

8. In 1994, the Congress of the United States enacted the Driver's Privacy Protection Act. Section 300003 of P.L. 103-322 provides that Driver's Privacy Protection Act takes effect three years after the enactment of P.L. 103-322, i.e., on September 13, 1997.

9. The Act directly commands the states, including South Carolina, not to disclose state motor vehicle and driver's license records except as provided by this Federal statute. 18 U.S.C. §2721(a).

10. The Act would permit the Attorney General of the United States to seek a civil penalty of up to $5,000 per day against a state if that state's department of motor vehicles "has a policy or practice of substantial noncompliance" with the Act. 18 U.S.C. §2723(a).

11. The Act would criminalize the obtaining or disclosing of information which the Act has directed the states not to disclose. 18 U.S.C. §2723(a) would make knowing violation of the Act a federal crime punishable by fine.

12. The Act also would subject to a federal civil damage suit any person who discloses information of the classes and types defined in the Act. 18 U.S.C. §2724(a). The remedies which might be awarded in such cases are defined in the Act as actual damages in an amount not less than $2,500, punitive damages if the disclosure was willful or reckless, attorneys' fees, and injunctive relief. 18 U.S.C. §2724 (b).

13. The State of South Carolina currently regulates the release of driver information through the provisions of Section 31 of Part II of Act No. 438 of 1996, and the

State wishes to continue to address the policy aspects of this question as it sees fit.

First Cause of Action

(Declaratory Relief for Violation of the Tenth Amendment to the U.S. Constitution)

14. Plaintiffs reallege Paragraphs 1 through 12 of the Complaint and by this reference incorporate the allegations in those paragraphs as though set forth in full herein.

15. By directing the states to regulate the disclosure of driver and motor vehicle information, the Act exceeds Congress' authority under the United States Constitution and violates the Tenth Amendment.

16. There is an actual controversy between Plaintiffs and Defendants as to whether the Act is constitutional. Plaintiffs contend that it is unconstitutional; upon information and belief, Defendants will contend that it is constitutional and must be enforced.

17. Plaintiffs are entitled to a declaration from this Court that the Act violates the Tenth Amendment to the United States Constitution, and should not be enforced, in whole or in part.

Second Cause of Action

(Declaratory Relief for Violation of the Eleventh Amendment to the U.S. Constitution)

18. Plaintiffs reallege Paragraphs 1 through 16 of the Complaint and by this reference incorporate the allegations in those paragraphs as though set fourth in full herein.

19. The Act provides in part that

> [a] person who knowingly . . . discloses personal information, from a motor vehicle record, for a purpose not permitted under this chapter shall be liable to the individual to whom the information pertains, who may bring a civil action in a United States district court.

18 U.S.C. § 2724(a).

20. The Act further specifies the remedies available in such civil actions as actual damages, "but not less than $2,500," and punitive damages for "willful or reckless violation of the law." 18 U.S.C. §2724(b).

21. Even if the Act is consistent with the Tenth Amendment, which Plaintiffs emphatically deny, the remedy provisions of 18 U.S.C. § 2724 quoted above are in violation of the Eleventh Amendment because they would effectively authorize damage suits against states under Congress's Commerce Clause powers by authorizing suits against the agents and employees of states. The Commerce Clause does not grant Congress the power to abrogate the states' sovereign immunity. Moreover, the State has not waived its Eleventh Amendment immunity in this context.

Third Cause of Action

(Injunctive Relief)

22. Plaintiffs reallege Paragraphs 1 through 20 of this Complaint, and by this reference incorporate the allegations of those paragraphs as though set fourth in full herein.

23. Plaintiffs are entitled to an Order enjoining Defendants from enforcing the Act in whole or in part.

Relief Requested

WHEREFORE, Plaintiffs respectfully pray that this Court grant the following relief.

1. Enter a declaratory judgment that the Act violates the Constitution of the United States and may not be enforced by Defendants against the State of South Carolina.

2. Enter a permanent injunction, enjoining Defendants and their agents and instrumentalities from enforcing the Act in whole or in part.

3. Grant the Plaintiffs such other and further relief as this Court may deem just and proper.

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BY:

/s/ KENNETH P. WOODINGTON
KENNETH P. WOODINGTON
ATTORNEYS FOR PLAINTIFFS

November 20, 1996

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

AFFIDAVIT

Personally appeared before me, J. Glenn Beckham, duly sworn, who deposes and says the following:

1. I am the Deputy Director for the Division of Motor Vehicles, a division of the South Carolina Department of Public Safety. My agency is responsible for the registration of motor vehicles and the issuance of drivers' licenses. I am personally familiar with the issues set forth below which would arise if South Carolina were required to comply with the federal Drivers' Privacy Protection Act (DPPA).

2. The DPPA would impose substantial costs and effort on the South Carolina Division of Motor Vehicles if compliance with the Act is required, as set forth below.

3. In order to comply with the opt-out provisions of 18 U.S.C. §2721(b)(11), it would be necessary as a practical matter for the Division of Motor Vehicles to mail a separate notification for every automobile registered, as well as for every licensed driver. The cost of such a mailing would likely exceed one million dollars.

4. Substantial additional costs would be required to enter the information received in response to such a mailout on the records of the Division. There are almost three million registered vehicles in the State and over twelve million vehicles titled in the State. In addition, there are over 2.3 million licensed drivers in the State. It is therefore reasonable to anticipate that well over a million opt-out requests would be received.

5. The data entry process would include a need to expand each driver's license, motor vehicle registration, and motor vehicle title on the agency's computer system, as well as a need to change the title application form used in the future in order to permit a space for the registrant to opt out of having information disclosed.

6. The implementation of DPPA would also require considerable expense in order to train staff about what information may be released to whom and for what purposes. Since all 70 field offices have access to what DPPA defines as "personal information," and since the penalties for improper release are personal to the employees and are criminal in nature, the training would have to be thorough and detailed.

7. While State law also requires the Division to implement opt-out notifications, State law does not require opt-out notification for drivers' license records, as the DPPA would require.

8. There is accordingly no question that if the DPPA is implemented in South Carolina, the Act's implementation will impose substantial expense and effort on officers and employees of the Division.

/s/ J. GLENN BECKHAM
J. GLENN BECKHAM

SWORN to before me this 21 day of February, 1997.

/s/ JO CAROL MILES (L.S.)
JO CAROL MILES (L.S.)
Notary Public for South Carolina
My Commission Expires: 10-7-2004

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

C.A. 3:96-3476-19

CHARLIE CONDON, ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA; AND STATE OF SOUTH CAROLINA, PLAINTIFFS

and

SOUTH CAROLINA PRESS ASSOCIATION; VIRGINIA PRESS ASSOCIATION; NORTH CAROLINA PRESS ASSOCIATION; WEST VIRGINIA PRESS ASSOCIATION; MARYLAND/DELAWARE/DISTRICT OF COLUMBIA PRESS ASSOCIATION; NEWSPAPER ASSOCIATION OF AMERICA; AND AMERICAN SOCIETY OF NEWSPAPER EDITORS, INTERVENORS

v.

JANET RENO, ATTORNEY GENERAL OF THE UNITED STATES; AND UNITED STATES OF AMERICA, DEFENDANTS

[Filed: Sept. 16, 1997]

ORDER

The Court hereby ORDERS on this the 16th day of September, 1997, at Columbia, South Carolina, that the Order entered in this case on September 11, 1997, be AMENDED in the following two respects (the amendments are underlined). First, the first sentence under subsection (1) on page 17 should read:

As noted, the United States primarily relies upon *Whalen*, in which the Supreme Court was presented *with* a constitutional privacy challenge to a State of New York statutory scheme which required the names and addresses of all persons who received prescriptions for certain drugs for which there was both a lawful and an unlawful market *to be disclosed to, and recorded by, the State.*"

Second footnote 21 on page 23 should read:

The Fourth Circuit did not seem overly impressed with these asserted privacy rights. *See* 974 F.2d at 487 ("It is difficult . . . to discern the precise nature of the right that the Red Cross is seeking to protect) and 974 F.2d at 489 ("Whatever privacy interests that are involved are protected by the district court's order").

These amendments are merely technical and do not affect any aspect of the merits of the September 11 Order.

/s/ DENNIS W. SHEDD
DENNIS W. SHEDD
UNITED STATES
DISTRICT JUDGE

In the Supreme Court of the United States

No. 98-1464

JANET RENO, ATTORNEY GENERAL, ET AL.,
PETITIONERS

v.

CHARLIE CONDON, ATTORNEY GENERAL OF
SOUTH CAROLINA, ET AL.

[Filed: May 17, 1999]

ORDER ALLOWING CERTIORARI

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit is granted.

May 17, 1999